BCK
BERNSTEIN, CUSHNER & KIMMELL, P.C.
ATTORNEYS AT LAW

Jeffrey M. Bernstein
Kenneth L. Kimmell
Erin M. O'Toole
Barbara Kessner Landau
Jonathan S. Klavens

The firm has attorneys who are also admitted to practice in California, District of Columbia, Idaho, and Vermont

585 Boylston Street, Suite 400
Boston, Massachusetts 02116
(617) 236-4090

Facsimile: (617) 236-4339
E-Mail: bckboston@bck.com
URL: www.bck.com

September 6, 2006

VIA HAND DELIVERY

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

RE: DTE 06-40
Initial Brief of the Cape Light Compact

Dear Secretary Cottrell:

Enclosed please find the original and eight (8) copies of the Initial Brief of the Cape Light Compact in the above-referenced proceeding.

If you have any questions regarding this request, please contact me at the above-listed number.

Sincerely,

Jonathan S. Klavens

JSK/drb
Enclosures

cc: Service List (w/enc.) (via first class mail)

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Vermont Office:
P.O. Box 205
Woodstock, VT 05091
Telephone: (802) 356-2560
Facsimile: (802) 910-1003
E-Mail: bckvt@bck.com

Mountain States Office:
P.O. Box 1527
Ketchum, ID 83340
Telephone: (208) 727-9734
Facsimile: (208) 727-9735
E-Mail: eotoole@bck.com

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Joint Petition of Boston Edison Company, Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approval of Merger	)))))	D.T.E. 06-40

INITIAL BRIEF OF THE CAPE LIGHT COMPACT

The towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), hereby respectfully submit this Brief with respect to D.T.E. 06-40.

While the Compact would support a merger and consolidation of rates that will benefit customers on Cape Cod and Martha's Vineyard, the Compact nonetheless objects to approval of the proposed merger on the record in this proceeding because NSTAR has failed to establish with detailed, substantial and credible evidence that the proposed merger will not result in net harm and, in particular, that the proposed merger will not result in inequitable harm to customers on Cape Cod and Martha's Vineyard.

I. BACKGROUND

The Cape Light Compact. The Cape Light Compact is a governmental aggregator under G.L. c. 164, § 134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It is organized through a formal Inter-Governmental Agreement (the

"Compact Intergovernmental Agreement") signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

The purposes of the Compact include, among other things, (1) to negotiate the best rates for the supply of electricity for consumers on Cape Cod and the Islands; (2) to advance consumer protection and interests for the residents of Cape Cod and the Islands; (3) to improve quality of service and reliability; and (4) to utilize and encourage renewable energy development. Compact Intergovernmental Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation competitive supply program which provides electric power supply on an opt-out basis to approximately 170,000 customers across all customer classes who are located within the Compact's service territory and would otherwise be served as default service customers.

Commonwealth Electric Company. Commonwealth Electric Company ("Commonwealth") is the local distribution company providing transmission and distribution service to all of the customers within the Compact's member municipalities and providing default service to customers within the Compact's member municipalities who opt out of the Compact's aggregation program.

The Joint Petition. On June 12, 2006, the Department received a Joint Petition for Approval of Merger (the "Joint Petition") of Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Canal Electric Company ("Canal") and Commonwealth (together with Boston Edison, Cambridge, and Canal, "NSTAR"). The Joint Petition seeks (1) approval, pursuant to G.L. c. 164, § 96, of a proposed merger among and between the aforementioned companies to create a single electric company, NSTAR Electric Company (the

"Merger") and (2) confirmation that Boston Edison, to be renamed NSTAR Electric Company, as the surviving corporation after the merger, will retain all the franchise rights and obligations that were previously held by Cambridge and Commonwealth.

The Merger provides for, among other things: (1) the consolidation of retail rates for default service, the pension adjustment factor and transmission service; (2) the potential consolidation of distribution rates and transition charges on or after January 1, 2010; (3) the reclassification of Cambridge's 13.8 kilovolt ("kV") facilities as distribution facilities with recovery of associated costs transferred from transmission to distribution rates; and (4) implementation of uniform depreciation rates. Joint Petition ¶¶ 9-14.

The Evidentiary Record. The Department and certain parties conducted extensive written discovery. The Department also conducted several days of evidentiary hearings at the conclusion of which the exhibits to the Joint Petition and all of NSTAR's discovery responses were admitted as evidence. Evidentiary Hearing Transcript 582 ("Tr.").[1]

II. LEGAL STANDARD

The Merger cannot be approved unless the Department finds that the Merger and the terms thereof "are consistent with the public interest." G.L. c. 164, § 96; *see also Boston Edison/Commonwealth Energy System Merger*, D.T.E. 99-19 (1999) (citing *Eastern-Colonial Acquisition*, D.T.E. 98-128 (1999), *Eastern-Essex Acquisition*, D.T.E. 98-27 (1998), and *NIPSCO-Bay State Acquisition*, D.T.E. 98-31 (1998)). Those cases established a "no net harm" standard for evaluating proposed mergers. *Eastern-Colonial Acquisition*, D.T.E. 98-128, at 5; *NIPSCO-Bay State*

[1] The Hearing Officer also admitted as evidence certain exhibits submitted by other parties, Tr. 582-83, as well as the entire record in D.T.E. 05-85, Tr. 417.

Acquisition, D.T.E. 98-31, at 9-10. Specifically, the petitioners have the burden of showing that there is an "avoidance of public harm" or that the "public interest would be at least as well served by approval of a proposal as by its denial." *Boston Edison/Commonwealth Energy System Merger*, D.T.E. 99-19, at 10. Stated a different way, to be consistent with the public interest, petitioners must show that "[t]he costs or disadvantages of a proposed merger must be accompanied by offsetting benefits that warrant their allowance." *NIPSCO-Bay State Acquisition*, D.T.E. 98-31, at 10.[2]

Petitioners must satisfy their burden of proof in an affirmative manner by producing "detailed, substantial and credible evidence." *Massachusetts Electric Company,* D.T.E. 99-47, at 34 (Mar. 14, 2000) (citing *Mergers and Acquisitions*, D.P.U. 93-176-A, at 7 (1995)); *Boston Edison Company*, D.T.E. 99-19, at 81 (July 27, 1999) (same). In addition, where projections of future events are necessarily involved, petitioners must ensure that such projections are "substantiated by past experience, and supported by logical reasoning founded on sound theory." *Massachusetts Electric* Company, D.T.E. 99-47, at 47 (citing *Eastern-Colonial Acquisition*, D.T.E. 98-128, at 18). Manifestly, petitioners cannot satisfy their burden of proof by pointing either to the absence of evidence regarding the likely effects of the Merger or to evidence regarding the uncertainty of the likely effects of the Merger or the impossibility of predicting such effects.

[2] The Department may review the following factors in determining whether a proposed merger is consistent with the public interest: (1) effect on rates; (2) effect on the quality of service; (3) resulting net savings; (4) effect on competition; (5) financial integrity of the post-merger entity; (6) fairness of the distribution of resulting benefits between shareholders and ratepayers; (7) societal costs; (8) effect on economic development; and (9) alternatives to the merger. *Mergers and Acquisitions*, D.P.U. 93-167-A at 7-9 (1995).

In light of the foregoing standard, NSTAR has not met its burden of showing that the Merger is consistent with the public interest.

III. ARGUMENT

NSTAR makes an argument that the Merger will result in no net harm but that argument is not supported by detailed, substantial and credible evidence, particularly with respect the impact of consolidation of transmission rates and default service rates. NSTAR's no-net-harm calculus fails to consider the potential harm to market participants arising from changes in NSTAR's data collection and reporting practices. Nor does NSTAR's calculus recognize the fact that customers have no way in the near future to share with NSTAR shareholders any savings in administrative costs resulting from the Merger.

A. NSTAR's "No Net Harm" Argument Is Suspect

NSTAR concedes that the Merger will result in either significant benefits or significant harm to the public. *E.g.*, Ex. NSTAR-CLV-1 at 10. Indeed, NSTAR contends that the Merger will in fact not result in net harm to any particular customer class, including any particular customer class within a particular existing service territory. Tr. 352.

In terms of benefits, NSTAR claims that the Merger would result in approximately $400,000 a year of savings in unspecified administrative costs, together with various other unquantified or intangible benefits. *See* NSTAR Response to DTE-3-4.

At the same time, NSTAR's corrected bill impact analyses appear to show modest impacts on customers from the consolidation of transmission rates, default service rates, pension adjustment factors and depreciation rates. *See, e.g.*, Att. RR-

DTE-2C. For example, according to NSTAR, an average household currently on Commonwealth's R-1 residential rate would see a net *decrease* in average monthly energy charges of 0.1% (0.017¢/kWh) following the proposed consolidation of rates on January 1, 2007. Att. RR-DTE-2C at 1. That net decrease is said to be the result of several simultaneous impacts. According to NSTAR, such a customer would see a 0.6% (0.004¢/kWh) increase in transmission rates, a 0.13% increase (0.014¢/kWh) in default service rates (including the so-called "Basic Service Adder" that captures costs associated with default service other than the cost of purchasing wholesale power) but a 43.8% decrease (0.035¢/kWh) in pension adjustment factor charges. *Id.*

While NSTAR estimates one-time legal and information technology costs of $600,000 to $650,000 associated with the Merger, NSTAR has provided assurances that its shareholders will bear those costs and that NSTAR will not seek to recover those costs from ratepayers in the future. *See* NSTAR Response to DTE-3-5.

Presented in this blithe and rosy manner, NSTAR's data make it appear as if the proposed consolidation of rates and charges will not adversely impact any group of customers. If these data are credible today and serve as a reasonable prediction of future impacts, it may well be the case that the Merger will not result in net harm to any customer group or net harm to the public as a whole.

As noted below, however, NSTAR's calculus is credible only to the extent that the benefits and costs included are sufficiently comprehensive and the underlying assumptions are credible and permissible. NSTAR's admitted exclusion of congestion charges and its assumption that wholesale power prices in the NEMA and SEMA load zones will be nearly identical makes its calculus highly suspect.

B. Consolidation of Transmission Rates Will Inequitably Harm Commonwealth Customers

NSTAR's contention that the Merger will result in no net harm rests in significant part on the assertion that the consolidation of transmission rates will have an insignificant impact on customers. That assertion is only possible because NSTAR ignores congestion costs, even to the point of declaring itself unable to make any sound predictions regarding congestion costs.

1. Transmission Rates and Congestion Costs Vary Significantly Across Service Territories

It is undisputed that retail transmission rates across NSTAR service territories are not equal. For example, for the customers on the R1 rate, the pre-Merger transmission rate for Boston Edison (1.280¢/kWh) is 84.2% higher, and for Cambridge (3.026¢/kWh) is 335.4% higher, than the pre-Merger transmission rate for Commonwealth (0.695¢/kWh). *See* Att. RR-DTE-2A at 1, Att. RR-DTE-2B at 1 and Att. RR-DTE-2C at 1. Similarly, using "actual forecasted 2006 congestion costs," NSTAR's estimated 2006 retail transmission rate for Boston Edison (1.331¢/kWh) is 51% higher, and for Cambridge (1.482¢/kWh) is 68% higher, than the estimated 2006 retail transmission rate for Commonwealth (0.883¢/kWh). Att. CLC-1-9 and n.**. *See also* Tr. 303 (testimony by NSTAR witness conceding this disparity).

It is also undisputed that congestion costs vary across service territories and that the overwhelming share of congestion costs incurred in NSTAR's service territories are caused by service to customers outside the Commonwealth territory. Indeed, only 1.9% of total SCR and RMR costs incurred by NSTAR in 2005 were the result of service to Commonwealth customers. *See* NSTAR Response to CLC-1-5; Tr. 308. Similarly, only 8% of total Retail Congestion Management Costs that

NSTAR anticipates incurring in 2006 are expected to be attributable to Commonwealth customers. *See* Att. CLC-1-9, line 4. In fact, when NSTAR's estimated 2006 Retail Congestion Management Costs for each company are divided by the estimated billed kWh for each company (the Estimated Billed GWH multiplied by 1,000,000), it appears that the estimated Retail Congestion Management Costs (converted from millions to cents) built into transmission rates for Boston Edison (0.7284¢/kWh) are 192% higher, and for Cambridge (0.8175¢/kWh) are 227% higher, than the estimated Retail Congestion Management Costs built into transmission rates for Commonwealth (0.2497¢/kWh). *See* Att. CLC-1-9, lines 4 and 19.

Future transmission costs for NEMA and Boston Edison are likely to be higher than 2005 costs as they are increased to cover the cost of the 345 kV Transmission Reliability Project, now expected to cost approximately $300 million. NSTAR Response to MIT-1-7. Nor is it clear that NEMA congestion costs (largely related to generation from Mystic Units 8 and 9)[3] are likely to end anytime soon. *See* ISO New England Reliability Agreements – Annual Fixed Costs Summary, Agreements Effective or Pending at FERC, Status Updates through Apr. 28, 2006.[4]

Further, it appears that congestion costs comprise a very significant portion of transmission costs. Based on NSTAR's estimated 2006 transmission costs, estimated 2006 Retail Congestion Management Costs account for *over half* of the total estimated transmission costs. *See* Att. CLC-1-9, lines 4 and 18.[5]

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[3] Based on the data presented by NSTAR, Mystic RMR costs represent an overwhelming 83% of NSTAR's 2006 projected total SCR and RMR costs. *See* Att. CLC-1-6.

[4] Available at www.iso-ne.com/genrtion_resrcs/reports/rmr/rmr_agreements_summary_fixed.xls.

[5] Based on the data in lines 4 and 18 of Attachment CLC-1-9, the percentage of each company's estimated 2006 total transmission costs comprised of estimated 2006 Retail Congestion Management Costs is as follows: Boston Edison, 55%; Commonwealth, 28%; Cambridge, 55%. The percentage of

2. NSTAR's Incomplete Analysis of Transmission Rate Consolidation

Given these striking disparities, it is remarkable that NSTAR asserts that the cost impacts of consolidating transmission rates will be minimal, Ex. NSTAR-CLV-1 at 16, and that transmission rates for Commonwealth customers will rise by only 0.6% (reduced from the roughly 1% increase initially asserted by NSTAR in its pre-filed testimony), *see* Att. RR-DTE-2C at 1; Ex. NSTAR-CLV-1 at 20.

How does NSTAR accomplish this stunning mathematical feat? Apparently, by excluding congestion costs. *See* NSTAR-CLV-1 at 19, 20 n.1. And why does NSTAR exclude congestion costs from the post-Merger analysis despite the fact that NSTAR's own estimates for 2006 indicate that congestion costs will comprise over half of total transmission costs? According to NSTAR's witness, NSTAR has "*no clue* what's going to happen in the future with . . . congestion costs," has "*very little foresight* or advance notice . . . on the congestion items," and "*cannot predict one way or the other* which company, which region, would be higher or which one would be lower in the future." Tr. 308 (emphasis added). *See also* Att. CLC-1-9, n.** (stating that NSTAR believes "that the amount and future location of [retail congestion management] costs are too highly uncertain to be used as going forward proxies").

Testimony as to lack of foresight certainly does not constitute "detailed, substantial and credible evidence" of the sort required to establish that no net harm will result from the Merger. *Massachusetts Electric Company,* D.T.E. 99-47, at 34. Surely NSTAR could have found some way of estimating future congestion costs – in

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the sum of each company's estimated 2006 total transmission costs representing the sum of each company's estimated 2006 Retail Congestion Management Costs is 51%.

a manner "substantiated by past experience, and supported by logical reasoning founded on sound theory," *id.* at 47 – in order to produce a meaningful analysis of the financial impacts of consolidating transmission rates.[6] By ignoring the effect of congestion costs, NSTAR has failed to introduce credible evidence showing the impacts of consolidation of transmission rates and has therefore failed to introduce credible evidence that the Merger will result in no net harm.

Moreover, common sense indicates that consolidating transmission rates that are strikingly different will result in a significant increase in transmission rates for those customers now paying lower transmission rates. Specifically, consolidated transmission rates raise the distinct possibility that customers on Cape Cod and the Islands will be forced to pay a disproportionate share of costs relating to the provision of transmission service to customers in other territories. NSTAR could have considered alternative merger proposals that would involve mitigation of potential inequities, but NSTAR apparently failed to consider any alternatives to its proposal. Ex. NSTAR-CLV-1 (acknowledging at page 6 that "[a]lternatives to the Merger" is a factor to be considered but failing to mention any alternatives to the Merger); Tr. 351 (failure by NSTAR witness to discuss any alternatives to the Merger as proposed).

C. Consolidation of Default Service Adjustment Charges Will Inequitably Harm Commonwealth Customers

Under current Department policy, a distribution company may collect from all distribution customers in one year the costs of providing default service in the prior year that the distribution company fails to recover from default service customers during that prior year. *See* D.T.E. 99-60-C (Oct. 6, 2000). The Compact has

[6] If unable to settle on a most likely scenario, NSTAR should at the very least have been able to analyze impacts of consolidation of transmission rates in a variety of possible scenarios.

repeatedly voiced objections to the default service adjustment mechanism and, among other things, has pointed to the unfairness that results when customers on Cape Cod and Martha's Vineyard who already pay for competitive generation service through the Compact's aggregation plan are forced (through the default service adjustment charge) to pay unrecovered costs for providing default service to other customers within Commonwealth territory. *See, e.g.*, D.T.E. 05-89, Initial Comments of Cape Light Compact (Dec. 20, 2005) ("Compact 05-89 Comments") (a copy of this filing is attached hereto as **Attachment A**).

It appears that, at least at some point following the Merger,[7] NSTAR will consolidate default service adjustment charges as part of its consolidation of transmission rates. Such a consolidation would only exacerbate the existing unfairness posed by the default service adjustment mechanism to customers participating in the Compact's aggregation plan because, following the Merger, such customers might then find themselves paying (through the default service adjustment charge) a portion of the unrecovered costs for providing default service to customers throughout the consolidated NSTAR service territory.

The Compact hereby incorporates by reference all the arguments it made in the Compact 05-89 Comments as to why the default service adjustment mechanism should be abolished. It should be noted that evidence in the record suggests that NSTAR will be less likely to experience under-recoveries of default service costs following the consolidation of default service rates. *Cf.* Tr. 348 (testimony of

[7] NSTAR has stated that, with respect to certain credits and obligations specific to a particular historic service territory, NSTAR will ensure that separate treatment continues in a transition period following the Merger. *See* NSTAR Response to CLC-1-31. Based on NSTAR Response to CLC-1-31, each company's 2006 default service cost under-recoveries will be collected in a default service adjustment charge only from customers in that company's former service territory. To eliminate any uncertainty about this point, in the event that the Department approves the Merger, the Department should require separate treatment of 2007 default service adjustment charges.

NSTAR witness indicating that revenue deficiencies will be less likely following the Merger). As a result, the Compact respectfully suggests that, in the event that the Department approves the Merger, the Department also prohibit NSTAR from using the default service adjustment mechanism.

D. Consolidation of Default Service Rates Will Inequitably Harm Commonwealth Default Service Customers

As part of its proposed Merger, NSTAR proposes to charge consolidated default service rates (*i.e.*, a rate that blends NEMA and SEMA wholesale power prices) to residential and small commercial customers. Ex. NSTAR-CLV-1 at 13-14. NSTAR claims that this consolidation of default service rates will result in a small increase in default service rates for Commonwealth customers on default service due to the fact that Commonwealth customers reside in SEMA and take power that has been purchased in the SEMA wholesale market. *See* NSTAR-CLV-1 at 14; Att. RR-DTE-2C, at 1. According to NSTAR's corrected bill impact analysis, a Commonwealth residential customer on the Annual R-1 rate will see default service rates increase by 0.14% from 10.454 ¢/kWh to 10.468 ¢/kWh. Att. RR-DTE-2C, at 1.

As with its analysis of transmission rate consolidation, NSTAR's analysis of consolidation of default service rates also appears to be based on faulty methodologies and questionable assumptions, in this case relating to the differences in wholesale power prices between NEMA and SEMA. While NSTAR asserts that prices for default service supply in the NEMA load zone were only 1.5% to 3.7% higher than prices for default service supply in the SEMA load zone in 2004 and 2005, NSTAR-CLV-1 at 14, these calculations were based on an analysis of energy prices in the real-time market whereas default service supply is procured through

bilateral agreements in forward markets, Tr. 322. The differences between NEMA and SEMA prices are much more significant in the forward markets. *See, e.g.*, Electric Restructuring in Massachusetts – Default Service – Monthly Default Service Price.[8] In fact, Boston Edison default service prices have exceeded Commonwealth default service prices by roughly 10%, not the 1% to 4% that NSTAR reports. *See id.*

NSTAR's allegations that the new 345 kV transmissions upgrades will minimize differences in wholesale power prices between the two regions, *e.g.*, NSTAR-CLV-1 at 14; NSTAR Response to DTE-1-23; DTE-1-23, Tr. 93, 116, are not supported by any detailed, substantial or credible evidence. The only rationale for NSTAR's thesis is a short one-paragraph narrative response to Information Request DTE-1-23. In that response, NSTAR concedes that it has not performed any analytical study to estimate the impact of the 345 kV transmission upgrades on the NEMA-SEMA pricing differentials. NSTAR Response to DTE-1-23. Even NSTAR's short qualitative response lacks sufficient detail to assess its credibility because it relies in part on the addition of unspecified "subsequent transmission system reinforcements," including unspecified transmission system reinforcements proposed by National Grid. *Id.* While transmission upgrades may well lead to some reduction in NEMA-SEMA price differentials, the critical questions for assessing impacts of the consolidation of default service rates are (1) whether such reduction will be large enough to eliminate unfair increases in default service rates for certain customers and (2) when such reductions will occur. NSTAR fails to provide any data or sound forecasts with respect to either of these questions.

[8] Available at http://www.mass.gov/dte/restruct/competition/defaultservice.htm.

In addition, NSTAR's reluctance to make any predictions regarding congestion costs has its counterpart in NSTAR's reluctance to make any predictions regarding uplift costs that are imposed by ISO New England on load serving entities and that are included in default service rates through an adder. *See, e.g.*, Tr. 259 (NSTAR witness testifies that she cannot even make an "educated guess" regarding 2007 RMR costs). Again, without providing some forecast of uplift costs "substantiated by past experience, and supported by logical reasoning founded on sound theory," *Massachusetts Electric Company,* D.T.E. 99-47, NSTAR has failed to provide a meaningful analysis of the financial impacts of consolidating default service rates.

Again, common sense suggests that consolidating default service rates that have varied significantly among service areas may result in a significant and inequitable increase in default service rates for default service customers in Commonwealth's service area.[9] And again, NSTAR could have considered alternative merger proposals that would involve mitigation of potential inequities, but NSTAR apparently failed to consider any alternatives to its proposal. Ex. NSTAR-CLV-1 (failing to mention any alternatives to the Merger); Tr. 351 (failure by NSTAR witness to discuss any alternatives to the Merger as proposed).

E. A Merger Should Not Imperil Valuable Data Collection and Reporting

NSTAR currently reports customer numbers, loads, investments, costs, as well as service quality and reliability, separately for each of its three distribution

[9] The Compact certainly understands that an increase in default service rates in the Commonwealth territory may have the effect of making it more desirable for customers on Cape Cod and Martha's Vineyard to take competitive supply through the Compact's aggregation plan. Nonetheless, one of the Compact's primary purposes is to advance consumer protection and interests for all residents of Cape Cod and the Islands. Compact Intergovernmental Agreement at Article I.

companies through, for example, periodic filings with the Department and with the Federal Energy Regulatory Commission ("FERC"). NSTAR's testimony indicated that NSTAR's data collection and reporting practices will change as a result of the Merger. Tr. 338-41; 428-36. As a result, the Merger could result in the loss of regional data valuable to the Compact and other market participants.

The primary data needed by the Compact are the data that NSTAR is obligated to collect and report to the Compact pursuant to that certain Energy Efficiency Plan Operating Agreement For 2003 Thru 2007, dated October 1, 2003, between Commonwealth and the Compact (the "EEP Operating Agreement") (a copy is attached hereto as **Attachment B**). NSTAR has committed to honor its obligations under the EEP Operating Agreement following the proposed Merger. NSTAR Response to CLC-1-26. Nonetheless, the agreement is scheduled to terminate on December 31, 2007. EEP Operating Agreement § 1. Accordingly, the Compact respectfully requests that the Department condition any approval of the Merger on NSTAR's extension of the agreement through at least December 31, 2010.

F. Customers Should Be Able to Share Any Merger Savings

To the extent that there are indeed decreases in distribution service costs that will result from efficiencies achieved through the Merger, NSTAR shareholders will receive a disproportionate benefit for those cost reductions because the settlement approved in D.T.E. 05-85 established a distribution rate scheme that is effectively independent of changes in costs. *See* NSTAR CLV-1 at 8 ("The future level of revenues for NSTAR Electric distribution service was resolved by the Settlement Agreement approved by the Department in D.T.E. 05-85."); Tr. 348-49 (testimony by NSTAR witness indicating that customers will not share administrative savings until

NSTAR's next distribution rate case). The Merger should not be approved unless its terms result in a fair distribution of merger benefits between stockholders and customers.

IV. CONCLUSION

The Compact has no objection to a merger of the NSTAR companies, including a consolidation of rates and charges, provided that the merger results in no net harm to customers on Cape Cod and Martha's Vineyard. The Compact would support a merger that results in a net benefit to customers on Cape Cod and Martha's Vineyard. The difficulty in this case is that NSTAR has failed to provide detailed, sound and credible evidence regarding the impacts of the proposed Merger and has therefore failed to meet its burden of proof under G.L. c. 164, § 96 and relevant Department precedent.

In the event that the Department nonetheless decides to approve the Merger, the Compact respectfully requests that any approval contain the following conditions:

(1A) Transmission rates may not be consolidated until NSTAR can establish through detailed, substantial and credible evidence that such consolidation (a) will not result in an increase of 1% or more in the transmission rates of Commonwealth customers and (b) will not result in any inequitable increase in the transmission rates of Commonwealth customers; *or, alternatively,*

(1B) Transmission rates may be consolidated but, for the first 10 years following the Merger, Commonwealth customers shall receive a credit for any increase in transmission rates in excess of 1% over pre-Merger transmission rates;

(2) NSTAR shall ensure that its default service rates reflect all default service costs and NSTAR shall not be allowed to use the default service adjustment mechanism;

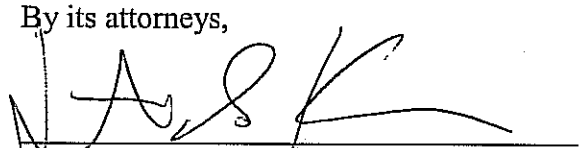
(3) NSTAR shall agree to extend the EEP Operating Agreement through at least December 31, 2010; and

(4) NSTAR shall return to distribution customers as a credit 50% of any savings realized by NSTAR as a result of the Merger.

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,



Jonathan S. Klavens, Esq. (jklavens@bck.com)
Jeffrey M. Bernstein, Esq. (jbernstein@bck.com)
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116
(617) 236-4090 (voice)
(617) 236-4339 (fax)

Dated: September 6, 2006

ATTACHMENT A

BCK
BERNSTEIN, CUSHNER & KIMMELL, P.C.
ATTORNEYS AT LAW

Jeffrey M. Bernstein
Kenneth L. Kimmell
Erin M. O'Toole
Barbara Kessner Landau
Jonathan S. Klavens

The firm has attorneys who are also admitted to practice in California, District of Columbia, Idaho, and Vermont

585 Boylston Street, Suite 400
Boston, Massachusetts 02116
(617) 236-4090

Facsimile: (617) 236-4339
E-Mail: bckboston@bck.com
URL: www.bck.com

December 20, 2005

VIA HAND DELIVERY

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: *Petition of Cambridge Electric Company and Commonwealth Electric Company requesting approval of their 2005 Transition Cost Reconciliation Filing D.T.E. 05-89 – INITIAL COMMENTS OF THE CAPE LIGHT COMPACT*

Dear Secretary Cottrell:

We represent the Cape Light Compact, a municipal aggregator under G.L. c. 164, § 134, that consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"). The Compact is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

On December 2, 2005, pursuant to G.L. c. 164, § 1(A) and 220 C.M.R. § 11.03(4)(e), Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (collectively, "the Companies") filed with the Department of Telecommunications and Energy (the "Department") their 2005 reconciliation filing (the "2005 Filing"), which consists of the reconciliation of transition, transmission, standard offer and default service costs and revenues, and proposed updated charges and tariffs to be effective January 1, 2006.

For 2006, the Companies propose the following: (1) average transition charge of $0.01723 per kilowatthour ("KWH") for Cambridge, and $0.02532 per KWH for Commonwealth; (2) average transmission charge of $0.02527 per KWH for Cambridge, and $0.00673 per KWH for Commonwealth; and (3) a default service adjustment factor of $0.00245 per KWH for Cambridge and $0.00506 per KWH for Commonwealth.

Vermont Office:
P.O. Box 205
Woodstock, VT 05091
Telephone: (802) 356-2560
Facsimile: (802) 910-1003
E-Mail: bckvt@bck.com

Mountain States Office:
P.O. Box 1527
Ketchum, ID 83340
Telephone: (208) 727-9734
Facsimile: (208) 727-9735
E-Mail: cocoole@bck.com

For the reasons set forth below, the Compact wishes to register its objection to immediate approval of the 2005 Filing and to request that in this or another appropriate proceeding, the Department update its policy on default service adjustments to be consistent with other Department orders and developments in the competitive retail market.

I. REVIEW AND APPROVAL OF THE 2005 FILING SHOULD BE STAYED PENDING RESOLUTION OF D.T.E. 05-85

On December 6, 2005, the Department received a Joint Motion for Approval of Settlement Agreement (the "Motion") of Boston Edison Company, Cambridge, Commonwealth (collectively, "NSTAR Electric"), NSTAR Gas Company (together with NSTAR Electric, "NSTAR"), the Attorney General of Massachusetts, the Low-Income Energy Affordability Network and Associated Industries of Massachusetts (collectively, the "Settlement Parties"). The Motion seeks approval of a Settlement Agreement (the "Settlement") that intends to resolve certain issues with regard to a base rate case that NSTAR was planning to file with the Department. Among other things, the Settlement promises a temporary reduction in the transition charge effective January 1, 2006 by 0.0907 cents per KWH. The Settlement Parties claim that the Settlement would result in a temporary net reduction of base rates of 0.092 cents per KWH for Commonwealth residential customers (46 cents per month for an average household consuming 500 KWHs a month). D.T.E. 05-85, Exh. NSTAR-19 (Settlement) Rate Design Models at 1. The Motion states that the Settlement will be withdrawn if the Department fails to approve the Settlement in its entirety by December 30, 2005.

If the Department considers and separately approves the 2005 Filing and the Settlement, the apparent result will be that the temporary reduction in the transition charge promised in the Settlement will be reduced by nearly 20% to 0.07367 (i.e., 0.0907 – 0.01703) cents per KWH, making the "rate relief" promised in the Settlement even more illusory than it already is.[1] Moreover, if the 2005 Filing is approved, the already miniscule average 46 cents per month of rate relief promised in the Settlement will instead be transformed into a *net increase* of roughly $1.00 per month for an average household in Commonwealth's service territory.

The Compact respectfully submits that an appropriate solution is for the Department to stay this proceeding until it has reviewed the Settlement. Presumably, this would also give the Settlement Parties an opportunity to amend the Settlement to deal as well with the rate increases that the Companies are requesting in this proceeding.

[1] For a preliminary discussion of why the Settlement merely creates the illusion of rate relief for consumers, please see the Compact's letter, dated December 15, 2005, filed in D.T.E. 05-85.

II. THE COMPANIES' PROPOSED DEFAULT SERVICE ADJUSTMENT SHOULD BE REJECTED PENDING REEXAMINATION OF A PROCESS THAT ALLOWS FOR ANTI-COMPETITIVE BELOW-MARKET PRICING OF DEFAULT SERVICE THAT IS INCONSISTENT WITH LEGISLATIVE INTENT AND OTHER DEPARTMENT ORDERS

A. The Default Service Adjustment Process Creates Significant Anti-competitive Market Distortions and Should Be Reexamined for the Post-Standard Offer Period

The legislature did not intend that default service supplant or thwart competitive retail generation service. In enacting Chapter 164 of the Acts of 1997 (the "Electric Restructuring Act" or "Act"), the legislature clearly intended that *competitive* retail service should serve as the vehicle to bring the benefits of the competitive wholesale market to consumers. *See, e.g.*, St. 1997, c. 164 § 1(c) (providing that "ratepayers and the commonwealth will be best served by moving from (i) the regulatory framework extant on July 1, 1997, in which retail electricity service is provided principally by public utility corporations obligated to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to (ii) a framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier"). With respect to the period following the seven-year standard offer period, the Act established default service merely as a service of last resort for a customer who has failed to select a competitive supplier or whose competitive supplier fails to provide contracted services. G.L. c. 164, §§ 1 (definition of "Default Service"), 1B(b), 1B(d).

To its credit, the Department has clearly recognized that default service rates must reflect default service costs and that inclusion of default service costs in base rates paid by all customers (including customers not receiving default service) would result in an inappropriate subsidization of default service rates that would send incorrect price signals to consumers and thwart competition in the retail market. *See, e.g.*, D.T.E. 02-40-B at 14-15 (Apr. 24, 2003). Indeed, over the years since 1997 as the Department has learned more about the impact of default service policies on the development of competitive markets, the Department has determined that more stringent policies are required to avoid subsidization of default service rates. For example, in D.T.E. 02-40-B, the Department reaffirmed "the principle that default service prices should include all costs of providing default service in order to allow competitive suppliers a fair and reasonable opportunity to compete for default service customers." *Id.* at 14. And in that proceeding, the Department reexamined its then-existing policies and recognized that certain default service costs charged to ratepayers were not negligible (the Department citing an increase of $0.002 per KWH as non-negligible) and had to be reflected in default service rates. *Id.* at 14.

One serious anomaly in the Department's default service policies is the default service adjustment process. This letter will describe the history of the default service adjustment process as it applies to Commonwealth. In its proposed restructuring plan, Commonwealth proposed a default service adjustment tariff whereby Commonwealth would, in the case of an under-collection of default service costs from default service customer in one year, collect the under-recovery from *all ratepayers* in the next year. The Department approved Commonwealth's restructuring plan in D.T.E. 97-111 (Feb. 28, 1998). The Division of Energy Resources and certain competitive suppliers, as members of a technical working group, strongly objected to the default service adjustment process on the grounds that this would result in artificially depressed default service rates that would send incorrect price signals to consumers and stifle retail competition. D.T.E. 99-60-C at 11 (Oct. 6, 2000). Nonetheless, the Department rejected those arguments, taking the view that all ratepayers should be responsible for under-collection of default service costs because default service acts as "insurance" for all ratepayers should they need to use default service. *Id.* at 13. It is important to recognize that the Department's ruling in D.T.E. 99-60-C was issued during the standard offer period when there were relatively few default service customers, default service costs were therefore low and, particularly in the residential and small commercial and industrial ("C&I") markets, the use of default service was indeed relatively rare. It was unclear to what extent the Companies would make use of the default service adjustment tariff. Moreover, retail competition was predictably anemic during the standard offer period and it was unclear whether, following the end of standard offer, any incorrect price signals tolerated by the default service adjustment process would be material enough to affect the post-standard offer emergence of retail competition.

The default service adjustment process is now an outdated artifact of the immediate post-restructuring years and must be reexamined. In the wake of the termination of the standard offer period on March 1, 2005, except on Cape Cod and Martha's Vineyard, the distribution companies have found themselves providing default service to the vast majority of residential and small C&I customers. The Companies never used the default service adjustment process for the years prior to 2005; the 2005 Filing is the first opportunity for the Department to examine how the Companies will use the adjustment process in the post-standard offer years and what effect that will have on the emergence of retail competition. And it is now manifestly clear that the default service adjustment process can and will have a very material effect on retail competition in general and the continued success of the Compact's and any other municipal aggregation program.

Consider the interplay of retail service rates in 2005. The 2005 retail service rate offered by the Compact's competitive supplier to residential customers who are part of the Compact's municipal aggregation program is $0.07132 per KWH. Commonwealth's default service rate in effect for March 2005 for residential customers was $0.07133 per KWH. A customer comparing these two prices might well conclude that there is no significant price difference between default service and competitive supply service offered through the Compact's program. But if the costs

represented by the Commonwealth's proposed default service adjustment for 2005 had been in the default service rate to begin with, Commonwealth's March 2005 residential default service rate would have been at least $0.07639 per KWH ($0.07133 + $0.00506) – *a price that would have been 7.1% higher than the Compact's competitive supply price.* That is a significant difference and indicates that the below-market rates sanctioned by the default service adjustment process pose a significant threat to retail competition and municipal aggregation in Massachusetts.

But these numbers do not even tell the whole story. The default service adjustment that Commonwealth wishes to collect from all ratepayers in 2006 represents an aggregate under-recovery of default service costs in the amount of $20,033,000. D.T.E. 05-89, Exhibit COM-CLV-5 at 1. Even if the default service adjustment process currently allows Commonwealth to collect unrecovered default service costs that were prudently incurred, collectible under-recoveries should only include those resulting from significant and unexpected changes in costs or customer load. (Note that under-recoveries due to bad debt must now be included in default service rates, not base rates. D.T.E. 02-40-B at 17.) In other words, the fact remains that in the first instance Commonwealth was under a clear legal obligation to incorporate all default service costs into default service rates. What would have happened if Commonwealth did what it was supposed to do? If Commonwealth had incorporated the unrecovered $20.033 million in the sale of the 1,781.440 million KWHs of default service sold to customers in 2005, D.T.E. 05-89, Exh. COM-CLV-5 at 1, Commonwealth's default service rate would have been increased by an average of $0.011245 per KWH. In other words, the true residential default service price in March 2005 might have been roughly $0.08258 per KWH instead of $0.07133 per KWH. *In other words, the true default service price would have been roughly 16% above the 2005 residential retail service rate available from the Compact's competitive supplier.* Clearly, the default service adjustment process can create significant negative market consequences that cannot possibly have been intended by or acceptable to the Department.

If the Department approves the proposed default service adjustment factor for inclusion in 2006 rates without modification, the result would be imposition of an unwarranted multi-million dollar penalty on the roughly 183,000 customers in the Compact's competitive supply program and the many other competitive supply customers on Cape Cod and Martha's Vineyard who are meeting the goals and obligations of the Restructuring Act by participating in the competitive marketplace.

The Compact recognizes that another proceeding may provide a more appropriate forum for reexamination of the default service adjustment process but the Compact respectfully requests that, if that is the Department's preferred way of proceeding, the Department identify or initiate such a proceeding so that this important issue is addressed in a timely fashion. The proceeding in D.T.E. 05-85 may well be the most appropriate current proceeding in which to address this issue. The Settlement at issue in that proceeding purports to resolve issues that

would have arisen in a general rate case and reexamination of the Companies' default service adjustment tariff would certainly be appropriate, if not necessary, in a general rate case.

B. Even in the Absence of a Reexamination of the Adjustment Mechanism, the Default Service Adjustment Requested in the 2005 Filing Should Be Carefully Scrutinized

Even if the Department is willing to maintain the current default service adjustment process and tolerate anti-competitive market distortions, the Compact respectfully requests that the Department apply all appropriate scrutiny to the Companies' request for a default service adjustment. The questions that should be answered in the Department's review include the following:

- Have the Companies demonstrated that their unrecovered 2005 default service costs were in fact *prudently* incurred costs? (The Companies should have no right to collect costs that were not prudently incurred, such as costs related to risks that would ordinarily be shouldered by a wholesale supplier.)

- Have the Companies demonstrated that their unrecovered 2005 default service costs do not include cost items (*e.g.*, unrecovered bad debt) that clearly cannot be recovered in base rates?

- Have the Companies adequately explained why they failed to recover their unrecovered 2005 default service costs and demonstrated that the under-recovery was due to factors beyond their control?

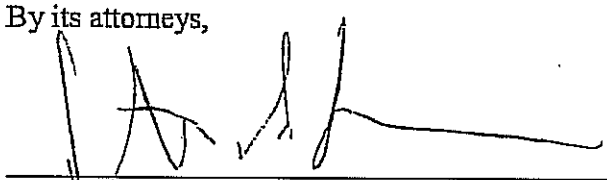
Based on the Compact's review, it does not appear that the 2005 Filing even attempts to answer these questions.

The Compact appreciates the opportunity to submit the foregoing comments.

Sincerely,

THE CAPE LIGHT COMPACT

By its attorneys,



Jonathan S. Klavens. Esq. (jklavens@bck.com)
Jeffrey M. Bernstein, Esq. (jbernstein@bck.com)
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116
617-236-4090 (voice)
617-236-4339 (fax)

JSK/drb

cc: Jody Stiefel, Hearing Officer (by hand)
Jeff Hall, Rates and Revenue Requirements Division (by hand – two copies)
Meera Bhalotra (by hand – two copies)
Robert N. Werlin, Esq., Keegan Werlin LLP (via email and first class mail)
Margaret Downey, Cape Light Compact (via first class mail)

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ATTACHMENT B

ENERGY EFFICIENCY PLAN OPERATING AGREEMENT

FOR 2003 THRU 2007

BETWEEN

NSTAR ELECTRIC AND THE CAPE LIGHT COMPACT

This Energy Efficiency Plan Operating Agreement (the "Agreement") is entered into this 1st day of October 2003 by and between Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR Electric" or the "Company") and the Cape Light Compact (the "Compact") (collectively, the "Parties" or individually a "Party").

RECITALS

WHEREAS, G.L. c. 164, § 134(b) provides that a group of municipalities that have established an electric load aggregation program approved by the Department of Telecommunications and Energy (the "Department") may adopt an energy-efficiency plan by which the group of municipalities may implement demand-side management ("DSM") programs; and

WHEREAS, on August 10, 2000, the Department approved the municipal aggregation plan presented by the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and the Counties of Barnstable and Dukes (collectively, the "Cape Light Compact" or the "Compact"); and

WHEREAS, Barnstable County (the "County") is the fiscal agency for the Compact and is responsible for, among other things, (a) receiving energy efficiency funds from the Company; (b) accounting for the funds; (c) disbursing payments to contractors, vendors and others as called for by the energy efficiency plan ("EEP"); and (d) preparing financial reports; and

WHEREAS, the Compact and the Company recognize that they share mutual customers on Cape Cod and Martha's Vineyard and provide different services to these customers in a manner that best satisfies the goals and objectives of each entity; and

WHEREAS, except as expressly set forth herein, the Company will have no further responsibility or liability for implementation of the Compact's EEP after it distributes funds to the County as described below; and

WHEREAS, on April 6, 2001, in Cape Light Compact, D.T.E. 00-47-C, the Department approved the Compact's energy efficiency plan (the "EEP") pursuant to G.L. c. 164, § 134(b); and

WHEREAS, on July 1, 2001, the Compact commenced the implementation of an energy efficiency program in accordance with the Department's approval in D.T.E. 00-47-C; and

WHEREAS, the initial operating agreement (the "Transition Plan") between NSTAR Electric and the Compact expired by its terms on or about December 31, 2002; and

WHEREAS, on a going-forward basis, the Parties desire to establish procedures for, among other things: (1) the forecasting of energy efficiency revenues due to the Compact and the annual reconciliation of estimated to actual revenues; (2) the distribution of energy efficiency funds by the Company to the Compact; and (3) the transfer of specified data from the Company to the Compact.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows, subject to the Department's continuing certification of the Compact's EEP:

1. EFFECTIVE DATE

This Agreement shall be effective as of January 1, 2003 and shall continue in effect until December 31, 2007, or until such time as the Agreement is otherwise terminated pursuant to Section 4(O) herein.

2. FINANCIAL TRANSACTIONS

A. Forecasts of Energy Efficiency Program Revenues

Before the beginning of each calendar year, the Company will provide the Compact with the forecasted amount of energy efficiency program revenues (the "EEP Revenues") for the forthcoming year in the Compact territory. The estimated EEP Revenues will be the basis for the transfer of funds from the Company to the Compact throughout the forthcoming year. The forecasted EEP Revenues shall be calculated by multiplying the customer DSM charge by the forecasted kWh sales in the Compact territory for the forthcoming year. The kWh sales in the Compact territory for the forthcoming year shall be forecasted by multiplying the kWh sales in the Compact territory during the previous year by the projected sales growth rate used by the Company for energy efficiency planning as of November 1. The estimated EEP Revenues shall be calculated each year by November 30. The Company shall provide the following data to document the estimated EEP revenues: (a) the projected sales growth rate used by the Company for general energy efficiency planning, (b) estimated annual sales to customers within Compact member communities for that forthcoming year, (c) the customer DSM charge, and (d) the estimated amount of Efficiency Program Revenues from the Compact member communities for that forthcoming year. Estimated EEP Revenues shall be subject to reconciliation as described in Section 2(B) herein.

B. Payment Terms

1. Monthly Payments

For each program year beginning January 2004, the Company will commence payments to the Compact as of February 1. Payments will be made on a biweekly basis on the 1st and 15th of each month for estimated consumption in the prior month. Each

payment shall equal the estimated annual EEP Revenues, divided by 24. Payments will be remitted by electronic transfer to the fiscal agent for the Compact and any payments not remitted by the Company within 10 days of the scheduled payment date shall accrue interest at a rate that shall be two times the commercial and industrial ("C&I") customer deposit rate, as established from time to time pursuant to 220 C.M.R. §26.09, compounded monthly.

2. Reconciliation

By April 1st of each calendar year, the Parties will calculate any differences between the estimated and the actual EEP Revenues for the prior year. Any differences will be reconciled over the subsequent three-month period by adjusting the amount of the payments due to the Compact from the Company. Pursuant to such reconciliation, the difference between the amounts paid by the Company in the prior year (February 1 through January 15th) and the amounts due for actual consumption during the calendar year (January through December), will be returned to the entitled Party with interest. Interest will be calculated based on the C&I customer deposit rate, as established from time to time pursuant to 220 C.M.R. §26.09, compounded monthly from February 1st of the year succeeding the program year that is the subject of reconciliation until the date of payment. In the event that this Agreement is terminated before the end of the calendar year, reconciliation of EEP Revenues shall be made within 90 days of the date of termination. A last and final reconciliation shall be made in the event that the statutory energy efficiency surcharge is terminated, the Compact ceases to provide energy efficiency services, or another similar termination event occurs.

3. DATA PROVISION

A. Quarterly Reports of Monthly Sales

The Company will provide the Compact with the actual monthly kWh sales by town and number of customer accounts in the Compact territory within thirty (30) days following the close of each quarter (March 31, June 30, September 30, December 31). The kWh sales and number of customer accounts shall be listed both by rate code and rate name, as outlined in Exhibit A. This information shall be provided in electronic format. The cost to provide the Compact with quarterly reports of monthly sales is $557.70 per quarter. The Company shall submit an invoice to the Compact upon provision of the data as set forth in Exhibit A, and the Compact shall pay such invoice within fifteen (15) business days.

B. Customer-Related Data

During the term of this Agreement, the Company will provide customer-related data to the Compact subject to the terms and conditions as outlined in Exhibit B, which may be modified from time to time upon the mutual consent of the Parties. The cost to provide the Compact with customer-related data in the format requested is $557.70 per quarter for Non-TOU customers, and $139.43 per quarter for TOU customers. The

Company shall submit an invoice to the Compact upon provision of the data as set forth in Exhibit B, and the Compact shall pay such invoice within fifteen (15) business days.

The Compact agrees to use the data in conformance with the terms and conditions of the Non-Disclosure Agreement executed with the Company on May 10, 2001. Furthermore, customer telephone numbers are to be used by the Compact and/or its energy efficiency vendors solely to administer the Compact's energy efficiency plan, as filed with the Department, and to implement the services and programs that are directly associated with its energy efficiency plan. The Compact may use the information at its own discretion as long as the use is consistent with G.L. c. 159C et seq., and as long as the Compact requires the same of its vendors. The Compact and NSTAR Electric also agree to notify each other one week prior to undertaking any significant residential marketing initiative through telephone calls to customers concerning energy efficiency measures within the Compact service territory.

In addition to the data to be provided by the Company to the Compact, the Parties may reach agreement on the provision of additional data, reports, analyses, or services in which event, the Parties shall agree to applicable terms, including costs, in a separate written agreement.

C. Other Customer-Related Activities

The Company will be responsible for all other customer-service issues involving customers in the Compact member communities, including without limitation: (1) billing and metering issues; (2) rate questions; and (3) power reliability issues.

D. Corrections

To the extent the Company determines that any information or data hereunder is in error, it shall promptly provide such information or data to the Compact.

E. Standard of Care

The Company shall use good utility practice in preparing and providing any information or data required under this Agreement.

4. MISCELLANEOUS PROVISIONS

A. Choice of Law

This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

B. Dispute Resolution

The Parties shall attempt to resolve, during the ordinary course of business, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity hereof by negotiation between representatives who will have the authority to resolve the dispute. In the event said dispute, controversy or claim is not

resolved, one Party may give the other Party written notice documenting the precise dispute, controversy, or claim. Within ten (10) days after delivery of such notice, the Parties shall make reasonable efforts to meet at a mutually acceptable time and place to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days of receipt of notice of the dispute, either Party may petition the Department for review of the issue, to the extent that the Department determines it has jurisdiction thereover. If the Department determines that it lacks jurisdiction, any action shall be filed in any court of competent jurisdiction located in Suffolk County in the Commonwealth of Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought from either the Department or a court of competent jurisdiction as described herein, without first resorting to the alternative dispute resolution provisions, solely to prevent any irreparable harm that would be caused by a material breach of this Agreement.

C. Notices

All notices, demands, requests, consents or other communications required or permitted to be made under this Agreement shall be in writing and deemed properly served if: (i) by hand delivery on the day and at the time delivered to the intended recipient at the address set forth in this Agreement; (ii) by certified or registered mail, on the third business day after the day it is deposited in the United States mail, or (iii) if by Federal Express or other reputable overnight mail service, on the next business day after delivery to such express mail service. Any party may change its address and contact person for the purposes of this Section 4(C) by giving notice thereof in the manner required herein. Notices shall be addressed as follows:

To the Company:

Penelope McLean-Conner
Vice President, Customer Care
NSTAR ELECTRIC
One NSTAR Way
Westwood, MA 02090

To the Compact:

Ms. Margaret Downey, Administrator
Cape Light Compact
P.O. Box 427
Superior Court House
Barnstable, Massachusetts 02630
(508) 375-6636 (voice)
(508) 362-4136 (fax)
mags@cape.com

Kevin Galligan, Program Manager
Cape Light Compact
P.O. Box 427
Superior Court House
Barnstable, Massachusetts 02630
(508) 375-6828 (voice)
(508) 362-4136 (fax)
kfg@cape.com

D. Limitation of Liability

The Company shall use reasonable efforts, consistent with good utility practice, to detect any errors or omissions in the data that it provides to the Compact pursuant to the terms of this Agreement. The Compact shall notify the Company promptly concerning errors or omissions in the data or information provided under this Agreement. So long as the Company has used good utility practice in preparing and providing such data or information, the Company's liability with regard to the provision of data or information is limited to furnishing corrected information at no additional cost or expense to the Compact.

E. Agreement in Entirety

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to that subject matter.

F. Modification or Amendment

This Agreement may only be amended or modified by a written instrument signed by all Parties hereto. A Party may suggest written modifications or amendments to this Agreement by giving notice to the other Party in accordance with the manner set forth in Section 4(C). A Party shall consider any such written modifications or amendments in good faith. If the Parties cannot agree to the proposed modification or amendment within thirty (30) days, the Dispute Resolution provisions of Section 4(B) shall take effect.

G. Relationship Between the Parties

Nothing herein contained shall be deemed to create a joint venture, partnership, agency or any other relationship between the Parties. The obligations of the Compact and the Company are individual and are not collective or joint in nature.

H. Joint Work Product

This Agreement shall be considered the work product of all Parties hereto, and therefore, no rule of strict construction shall be applied against any Party hereto.

I. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

J. Waiver

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party to complain of any action or non-action on the part of any other Party, shall

be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

K. Headings and Captions

The headings and captions appearing in this Agreement are intended for reference only and are not to be considered in construing this Agreement.

L. Survival of Obligations

Termination of this Agreement for any reason shall not relieve the Company or the Compact of any obligation accrued or accruing prior to such termination.

M. Construction and Severability

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or section of this Agreement is declared to be contrary to Massachusetts law, or the applicability thereof to any government, agency, person or circumstance is held invalid, the remainder of this Agreement shall continue in effect.

N. Duty to Cooperate

The Company and the Compact shall act in good faith at all times and take any other reasonable actions consistent with the terms of this Agreement so that the Compact may implement its Energy Efficiency Plan.

O. Termination

This Agreement shall terminate on December 31, 2007, or upon the date the Department ceases to approve the Compact's administration of an EEP.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of [date]~~.~~ October 1, 2003.

NSTAR ELECTRIC

By: Penni Mckeon-Conner

Penni M. Conner
Vice President, Customer Care
One NSTAR Way, SW310
Westwood, MA 02090

CAPE LIGHT COMPACT

By: _____

Margaret T. Downey
Administrator
P.O. Box 427
Barnstable, Massachusetts 02630

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of ~~[date]~~ October 1, 2003.

NSTAR ELECTRIC

By: _____

Penni M. Conner
Vice President, Customer Care
One NSTAR Way, SW310
Westwood, MA 02090

CAPE LIGHT COMPACT

By: Margaret T. Downey

Margaret T. Downey
Administrator
P.O. Box 427
Barnstable, Massachusetts 02630

CLC 2001 Data Summary - NSTAR Data

Rate Code	Rate Name	Accounts	Customers	kWh
R-1	Res. Non-Heat/Annual	1,242,605	103,550	648,149,428
R-1	Res. Non-Heat/Seasonal	401,834	33,486	109,064,652
R-2	Res. Assistance/Annual	53,320	4,443	27,253,242
R-2	Res. Assistance/Seasonal	435	36	159,636
R-3	Res. Heating	220,929	18,411	193,516,890
R-4	Res. Assistance Heating	13,280	1,107	13,406,268
R-5	Res. Water Heating	79,838	6,653	13,060,897
S-1	Res. Non-Heat/Annual-Area/Street Ltg.	7,650	638	272,893
G-1	Mun. Gov./ General	12,780	1,065	55,217,633
G-1	Mun. Gov./ Water Pumping	2,106	176	10,349,543
G-2	Mun. Gov./ General-Medium TOU	522	44	20,543,641
G-2	Mun. Gov./ Water Pumping-Medium TOU	36	3	1,151,440
G-2	Mun. Gov./General-Medium TOU	261	22	8,855,691
G-3	Mun. Gov./ General-Large TOU	36	3	1,942,320
G-5	Mun. Gov./ General-Comm. Htg.	158	13	280,912
G-7	Mun. Gov./ General TOU	238	20	281,004
R-1	Mun Gov./ General-Res. Annual	36	3	22,169
R-5	Mun. Gov./ General-Wtr Heating	36	3	1,954
G-1	State Gov./ General	1,537	128	4,314,488
G-2	State Gov./ General-Medium TOU	36	3	2,322,000
G-3	State Gov./ General-Lg. TOU	36	3	3,627,600
G-5	State Gov./ General-Comm. Htg.	12	1	35,990
G-7	State Gov./ General TOU	24	2	55,158
R-5	State Gov./ General-Wtr Heating	24	2	10,853
G-1	Fed. Gov./ General	1,955	163	7,012,689
G-1	Fed. Gov./ Water Pumping	143	12	2,455,052
G-2	Fed Gov./ Med. General TOU	324	27	10,389,804
G-3	Fed Gov./ Lg. General TOU	72	6	40,218,480
G-5	Fed. Gov./ General-Comm. Htg.	91	8	86,940
R-5	Fed. Gov./ General-Wtr Heating	36	3	1,066
G-1	Comm./ General Annual	208,594	17,383	432,885,599
G-1	Comm./ General Seasonal	24,591	2,049	31,077,601
G-2	Comm. Medium General TOU	3,711	309	146,094,261
G-3	Comm. Large General TOU	108	9	22,110,001
G-5	Comm. Heating	9,963	830	16,584,181
G-6	Comm./General Annual-All Elec.Sch.	12	1	50,880
G-7	Comm. General TOU	430	36	1,819,029
R-5	Comm./ General-Wtr Heating	1,179	98	203,792
S-1	Comm. General Lighting	20,626	1,719	2,917,359
G-1	Industrial General Annual	72	6	2,175,174
G-2	Industrial Medium General TOU	453	38	16,524,947
G-7	Industrial General TOU	72	6	54,845
S-1	Fed. Gov./ Street & Traffic Lights	132	11	75,058
S-1	Mun. Gov./ Street & Traffic Lights	4,773	398	4,270,777
S-1	State Gov./ Street & Traffic Lights	1,610	134	579,610
S-2	Mun. Gov. Owned Street Ltg.	13	1	1,420,543
	Total:	2,316,729	193,061	1,852,903,990

Exhibit B

Below is an explanation of the layout of the electronic files containing the customer data
There are 6 files containing customer and meter information. The file labeled **capeTOU.zip** contains the time of use customer and meter usage data. Files labeled **capetown1.zip to capetown5.zip** contain customer and meter usage data for non-time of use customers. These files are delimited by a semicolon (;) and are broken down as follows:

File Name	# of records	# of customers
Capetown1.zip		
Capetown2.zip		
Capetown3.zip		
Capetown4.zip		
Capetown5.zip		
CapeTOU.zip		

The column headings for the **capetown1.zip to capetown5. zip** files are listed below.

Field name

Account
Customer
Service Street #
Service Street Name
Service Street Suffix
Service Town
Service Zip
Tax Id
Rev/Rate
Standard or Default
Phone #
January Use
January Demand
February Use
February Demand
March Use
March Demand
April Use
April Demand
May Use
May Demand
June Use
June Demand
July Use
July Demand
August Use
August Demand
September Use
September Demand
October Use
October Demand
November Use
November Demand
December Use
December Demand
Mail Street # Name

Mail Town
Mail State
Mail Zip

The column headings for the **capeTOU.zip** file are listed below. This file is different than the non-TOU accounts. This file lists each customer 12 times with each month's usage listed on one line.

Field name

Account
Customer
Service Street #
Service Street Name
Service Street Suffix
Service Town
Service Zip
Tax Id
Rate
Revenue
Standard or Default
Phone #
KWH
From Date
To Date
Peak KVA
Mail Street # Name
Mail Town
Mail State
Mail Zip

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Joint Petition of Boston Edison Company, Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approval of Merger	)	D.T.E. 06-40

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person on the service list compiled by the Secretary in this matter. Dated at Boston this 6th day of September, 2006.

Jonathan S. Klavens, Esq. (jklavens@bck.com)
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116
(617) 236-4090 (voice)
(617) 236-4339 (fax)

SERVICE LIST
DTE 06-40

Mary Cottrell, Secretary
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

John Cope-Flanagan, Assistant General Counsel
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Meera Bhalotra
Rates & Revenue Requirements Division
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Joseph Passaggio
Rates & Revenue Requirements Division
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Joseph Rogers, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1598

Richard Benka, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

Donna Sharkey, Esq.
Rubin and Rudman
50 Rowes Wharf
Boston, MA 02110 06-40

John DeTore, Esq.
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110-3319

Joan Foster Evans, Esq., Hearing Officer
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Shashi Parekh, Electric Power Division
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Jeff Hall
Rates & Revenue Requirements Division
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Paul Osborne, Assistant Director
Rates & Revenue Requirements Division
Department of Telecommunications & Energy
One South Station, 2nd Floor
Boston, MA 02110

Erika Hafner, Esq.
Keegan Werlin LLP
265 Franklin Street, 6th Floor
Boston, MA 02110-3113

Mary Beth Gentleman, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

David Rosenzweig, Esq.
Keegan Werlin LLP
265 Franklin Street, 6th Floor
Boston, MA 02110-3113

Robert Werlin, Esq.
Keegan Werlin LLP
265 Franklin Street, 6th Floor
Boston, MA 02110-3113

Robert Shapiro, Esq.
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110-3319

Roger Borghesani
The Energy Consortium
24 Hastings Road
Lexington, MA 02421-6807

Christopher Kallaher, Esq.
Direct Energy
236 Huntington Avenue, Suite 306
Boston, MA 02115

Alan D. Mandl, Esq.
Smith & Duggan LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773

Robert Munnelly, Jr., Esq.
Murtha Cullina LLP
99 High Street, 20th Floor
Boston, MA 02110-2320

Colleen McConnell, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Jeffrey M. Bernstein, Esq.
Jonathan S. Klavens, Esq.
Bernstein Cushner & Kimmell PC
585 Boylston Street, Suite 400
Boston, MA 02116

T:\Clients\BCY\DTE 06-40\Service List 06-40.bcy.wpd